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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,197	05/31/2001	L. Jeffrey Kapner III	K35A0807	1905

26332      7590      12/23/2005

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EXAMINER

USTARIS, JOSEPH G

ART UNIT	PAPER NUMBER
2617	

2617

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No. 09/872,197	Applicant(s) KAPNER ET AL.	
Examiner Joseph G. Ustaris	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
(b)  They raise the issue of new matter (see NOTE below);  
(c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached.  
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13.  Other: \_\_\_\_\_



VIVEK SRIVASTAVA  
PART OF PAPER NO. 20051216

***Response to Arguments***

1. Applicant's arguments filed 9 December 2005 have been fully considered but they are not persuasive.

Applicant argues with respect to claims 1, 9, and 17 that Jerding does not disclose a pop-up that displays first program data associated with a first program of the selected channel identifier in response to the first input... and displaying second program data associated with a second program of the selected channel identifier in response to the second input. However, reading the claims in the broadest sense, Jerding still meets all the limitations of claims 1, 9, and 17. Jerding discloses that the user can enter a browse mode via the CBS KCBC or "the selected channel identifier" shown in Figs. 5-6. Within this mode the user can view FOX or "first program" along with its "first program data" furthermore the user can view another program e.g. BRAVO or "second program" along with its "second program data" shown in Fig. 7. The user can view both the FOX program and the BRAVO program from the same browse mode, which was entered by selecting the CBS KCBC or "the selected channel identifier".

Applicant also argues with respect to claims 1, 9, and 17 that Jerding does not disclose pop-ups. However, reading the claims in the broadest sense, Jerding does disclose pop-ups. Figs. 5-7 discloses an information banner 120, menu 140, and browsable listing 160 functions as the pop-ups. Upon changing channels or user request the information banner or menu pops up and is displayed on top of the existing image (See Figs. 5 and 6). Furthermore, upon user completion of the browse mode or

the cancel operation, the menu and eventually the banner would disappear thereby allow the user to view the program as suggested by Figs. 5-7.

Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner suggests that the applicant consider providing more details in the independent claims about the guide that displays the channel identifiers and icons and how the pop-ups relate to the identifiers as disclosed by applicant's specification (See Fig. 2).

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph G. Ustaris whose telephone number is 571-272-7383. The examiner can normally be reached on M-F 7:30-5PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JGU  
December 16, 2005



**VIVEK SRIVASTAVA**  
**PRIMARY EXAMINER**